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VIA OVERNIGHT COURIER

June 28, 2002

National Highway Traffic Safety Administration
Docket Management Facility
Nassif Building - Room PL-401
400 Seventh St. S.W.
Washington, D.C. 20590

RE: **Docket No. NHTSA-02-12150 - 6**
RIN: 2127-A120
Notice of Proposed Rulemaking – Confidential Business Information
67 Federal Register 21198, dated April 30, 2002

Dear Sir or Madam:

Bendix Commercial Vehicle Systems LLC (BCVS) is a developer and manufacturer of air brake systems and components for commercial vehicles. BCVS, as a motor vehicle equipment manufacturer, submits the following response to the National Highway Traffic Safety Administration's (NHTSA) above referenced Notice of Proposed Rulemaking (NPRM). This NPRM requests comments on proposed rules that are intended to implement the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, specifically the confidential treatment of business information submitted to the Agency under the Act.

I. Early Warning Information Should Not Be Presumptively Releasable.

BCVS believes the class determinations in Appendix B with respect to early warning information (such as consumer complaints, property damage claims, and warranty claims) should not be presumptively deemed not to cause competitive harm if publicly released. This presumption of non-confidential treatment is contrary to Section 3(b)(4) of the TREAD Act. Indeed, the Agency correctly interprets the TREAD Act's provisions in Section 512.23(a)(3) wherein the Agency acknowledges that "early warning information collected pursuant to regulations promulgated under [the TREAD Act] shall not be disclosed under this section, unless the Administrator determines the disclosure of the information will assist in carrying out [the National Traffic and Motor Vehicle Safety Act]." BCVS believes this early warning information should be presumptively deemed confidential, unless the Agency makes the determination as required under the TREAD Act.

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BCVS is concerned that the early warning information typically is raw data that can be inaccurate and/or misleading. Often, warranty claims are misclassified when submitted to the manufacturers. Customer or consumer complaints, property damage claims, and warranty claims frequently prove unfounded and properly are denied. BCVS believes public disclosure of raw, misclassified, and potentially misleading information of this type could cause competitive harm to the submitter in the marketplace. If faced with negative misinformation about a submitter's product, customers would be more apt to choose a competitor's product over the submitter's product. The reputation of the submitter in the marketplace would also be potentially put in jeopardy.

Manufacturers often treat early warning-type information as confidential business information in order to avoid the potential commercial harm that could be attributable to the inappropriate public dissemination of such information. The submitter's own treatment of information forms the basis for confidential treatment of information voluntarily disclosed to the Agency under Section 512.8. It would be inconsistent with the provisions of Section 512.8 for the Agency to presumptively classify early warning information that a manufacturer otherwise deems confidential, as being presumptively nonconfidential. Accordingly, BCVS respectively urges the deletion of the early warning information from the class determination in Appendix B(b).

II. NHTSA Should Be Responsible For Redacting Personal Information.

In Section 512.5(c), BCVS suggests that NHTSA should have the burden of redacting information of a personal nature (such as names, addresses, phone numbers, etc.). The burden of disclosure of this sort of information should not be borne by the equipment manufacturers.

III. Third Parties Should Have The Right To Seek Confidential Treatment.

With respect to Section 512.9, BCVS suggests that the rule should afford the third party, such as a supplier, with the opportunity to make a direct request for confidential treatment of its information that may be the subject of a submission to the Agency.

IV. Duty To Amend Should Have Fixed Period.

In Section 512.10, BCVS recognizes that the prior standard contained a duty to amend submissions. BCVS suggests the Agency take this opportunity to clarify the regulation. BCVS suggests that the affirmative obligation to amend a submission should remain effective only during the course of an investigation or proceeding, and once an investigation is closed or a recall is instituted, then the duty to amend should cease. Further, in the event that a Freedom of Information Act request is subsequently made for information previously deemed confidential, the submitter would have the opportunity to declare that the information is no

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longer confidential, if that is the case, and should be able to do so without exposure to civil penalties under Section 512.13(a).

V. Return of Information Voluntarily Submitted If Request for Confidentiality is Denied.

BCVS suggests Section 512.18 be amended to clarify that information voluntarily provided to the Agency for which confidential treatment is requested should be returned to the submitter, upon request, in the event the Agency denies the request for confidential treatment.

BCVS appreciates the opportunity to provide comments to NHTSA concerning the Confidential Business Information NPRM.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Dennis Losh".

Dennis Losh
Director, Engineering

DL:pmd